

# LAFCO of Napa County

*Local Agency Formation Commission*

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January 23, 2004

**TO:** Local Agency Formation Commission

**FROM:** Daniel Schwarz, Executive Officer

**SUBJECT:** *American Canyon Sphere of Influence Update*: Supplemental Report  
Response to Comments and Release of Revised Initial Study

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At its December 11, 2003 meeting, the Commission initiated a public review and comment period for the *Comprehensive Study of American Canyon: Sphere of Influence Review and Proposed Update* and the draft Mitigated Negative Declaration for the Proposed American Canyon Sphere of Influence Update. The review and comment period ended on January 14, 2004. Substantive written comments were submitted on behalf of the City of American Canyon by William D. Ross, City Attorney; on behalf of the County of Napa by William S. Chiat, County Executive Officer; and on behalf of the Napa Airport Pilots Association, by Tom McGee, Chairman. (Attachment A). The comments submitted by the County of Napa include an analysis of LAFCO's documents prepared by Deputy County Counsel Silva Darbinian. On January 8, 2004, the Commission received oral comments during a public hearing on this matter. Most of the comments made during that hearing emphasized points made in the written comments of the two affected agencies. However, two affected property owners voiced their objections to the inclusion of their properties in the proposed sphere of influence and requested clarification as to the process to formalize their opposition.

This supplemental report addresses the issues raised by these comments and outlines the remaining steps that LAFCO will take with respect to the proposed sphere of influence update. The Commission continued its public hearing on this matter to February 26, 2004. The Commission has placed this matter on its agenda for the purpose of voting on the proposed sphere of influence update at that hearing.

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Representative of the General Public

Daniel Schwarz  
Executive Officer

## **RESPONSE TO ISSUES RAISED AT JANUARY 8, 2004 PUBLIC HEARING**

### **Distinction Between Sphere of Influence Changes and Annexations**

LAFCO creates, amends, and updates spheres of influence to indicate to local agencies and property owners that, at some future date, a particular area is anticipated to require the level of municipal services offered by the subject agency. A sphere is a key component of the planning process, as it indicates to land use authorities and interested parties whether LAFCO expects a need for a jurisdictional change. It also indicates to other potential service providers which agency LAFCO believes to be best situated to offer the services in question. In practical terms, spheres are components of an agency's governing planning document – its general plan. Spheres serve as initial gatekeepers to annexation, as agencies can only annex territory within their sphere. If territory is outside a sphere, a concurrent sphere amendment and annexation can be proposed, but the proposal must demonstrate that the factors for both procedures are satisfactorily addressed. Plus, if the subject territory was evaluated in the most recent sphere update, then proponents must demonstrate that the determinations made in that study – determinations that resulted in the exclusion of the property from the sphere – no longer apply.

Properties in a sphere of influence remain unincorporated. Annexation is the process whereby land transfers from the jurisdiction of a county to that of a city. That properties are placed within a sphere should not be interpreted to mean that annexation is a foregone conclusion. A sphere of influence remains primarily a planning tool. Inclusion in a sphere indicates that the Commission recognizes that the current or planned use of a property may require the increased levels of municipal service that the subject agency can provide, and acknowledges that annexation may be appropriate. While the sphere determines future boundaries defined by law to be “probable” and viewed by LAFCO as likely, annexation proposals must still be considered on their own merits. Annexation cannot occur without the consent of a majority of affected property owners.

### **Consideration of Positions of Affected Property Owners**

Affected property owners are encouraged to submit written notice to LAFCO of their support or opposition to the proposed sphere of influence changes. Written notice submitted prior to 5:00 p.m. on Tuesday, February 17, 2004 will be included in staff's final comments concerning the proposed sphere update. Affected property owners are also encouraged to attend the public hearing on this matter, which will be held at 4:00 p.m. on Thursday, February 26, 2004 in the Board of Supervisors Meeting Room (Room 305), County Administration Building, 1195 Third Street, Napa.

## **RESPONSE TO ISSUES RAISED BY WRITTEN COMMENTS**

### **American Canyon Fire Protection District as it Relates to the City Sphere of Influence**

The American Canyon Fire Protection District (ACFPD) is a special district that has provided fire prevention and protection services to a substantial portion of south Napa County since 1957. In 1992, the City of American Canyon incorporated and the ACFPD became a subsidiary district of the City. As a subsidiary district, the financing and administration of the ACFPD operates independently from the City, but the governing board is the same. The five elected city council members are also the ACFPD Board of Directors.

Some of the unincorporated properties on Green Island Road (Area 3) and all of Watson Lane (Area 2) are within the boundaries of the ACFPD. The ACFPD is generally the first company to respond to emergencies within all four of the proposed sphere update areas. To the extent that there may be some property owners that do not distinguish between the City of American Canyon and the ACFPD, the receipt of service from the ACFPD constitutes a form of social and economic community between property owners and both agencies. Furthermore, it should be noted that with respect to annexations to the City of American Canyon of property outside the ACFPD, it is the Commission's policy to require concurrent annexation to the District.

Based on these factors, the relationship of the American Canyon Fire Protection District to the sphere update areas is another factor for consideration by the Commission of staff's recommendation to modify the City's sphere of influence. However, it must also be noted that LAFCO law recognizes these agencies as distinct entities. Subsidiary districts exist, in part, so that areas outside of a city – areas that are not considered part of the probable future boundaries of the city – can receive the service(s) offered by that district. The fact that unincorporated properties are within a subsidiary district's boundaries should not be considered a compelling factor in-and-of-itself for a change of a sphere or for a change of organization.

### **Airport Land Use Compatibility Plan as it Relates to the City Sphere of Influence**

The Napa County Airport Land Use Commission (ALUC) is authorized by state law to prepare, amend, and approve an Airport Land Use Compatibility Plan for the Napa County Airport. The current version of this land use plan creates five distinct compatibility zones around the airport. The attached map depicts these zones and their location relative to the American Canyon Sphere of Influence Update (Attachment B). Three of the four sphere update areas are located within the "Common Traffic Pattern" or "D" zone of the Plan. (A small portion of the Eucalyptus Groves – Area 4 – is in the "Other Airport Environs" or "E" zone.) Only the Napa Valley Unified School District property at American Canyon Road and Flosden Road (Area 1) is outside the boundaries of the Plan.

The initial study prepared for the sphere of influence update analyzes the general plans of both the County of Napa and the City of American Canyon. The initial study also makes

assumptions about likely development based on these general plans and conversations with officials from both agencies. The development projections consist of 10 single-family dwelling units on Watson Lane (Area 2), approximately 1.5 millions square feet of commercial/industrial development on Green Island Road (Area 3), and approximately 80 acres of commercial recreational use in the Eucalyptus Groves (Area 4). Of these projected uses, only the residential use on Watson Lane is inconsistent with the restrictions of the D zone of the Airport Land Use Compatibility Plan. However, the 10 single-family units discussed in the initial study projections already exist and predate the adoption of the plan.

Based on these factors, the proposed sphere of influence update is consistent with the Airport Land Use Compatibility Plan.

#### CEQA as it Relates to the Proposed Sphere of Influence Update

The comments submitted by the City of American Canyon and the County of Napa focus primarily on two issues: (1) Whether LAFCO has the authority to propose mitigation measures relating to foreseeable development in the sphere update areas; and (2) whether the proposed sphere update is a “project” as defined by the California Environmental Quality Act (CEQA). The attached memorandum (Attachment C) from Commission Counsel Jacqueline Gong addresses these issues in detail.

#### *Does LAFCO have the Authority to Impose the Proposed Mitigation Measures?*

Upon consideration of the submitted comments, it is staff’s conclusion that it is not legally feasible for LAFCO to impose the mitigation measures as proposed in the original initial study to address the cumulative effects of future development in the proposed sphere of influence update areas. Therefore, it is not appropriate for the Commission to adopt the proposed mitigated negative declaration. However, the Commission’s inability to impose these mitigation measures does not eliminate the need for their due consideration at the appropriate point in the planning process. The draft mitigated negative declaration identifies future environmental impacts and should be used as a reference by whichever agency regulates the eventual development. In this sense, the mitigation measures are an advisory statement by LAFCO, which may need to turn to this draft document as a reference point for the review of environmental impacts of any changes of organization (involving the sphere update areas) for which an underlying development project is known, or reasonably foreseeable. (It must be acknowledged that the letter from the City of American Canyon offers a number of points of clarification with respect to the environmental concerns identified in the initial study. These points should be concurrently reviewed when using the draft mitigated negative declaration as a reference document.)

#### *Is the Proposed Sphere of Influence Update a “Project” under CEQA?*

In response to staff reports outlining concerns about the application of CEQA to a sphere of influence update, the Commission (at its March 13, 2003 meeting) entered into an agreement with the consulting firm of Nichols Berman. Working with LAFCO staff, Nichols Berman reviewed the preliminary sphere update recommendations (issued in

December 2002) to determine the appropriate level of analysis and action to be taken by the Commission. The determination of whether the American Canyon sphere update is a project rests on whether the Commission can foresee a change in the environment as a result of a change to the sphere of influence. It remains staff's conclusion that the sphere update is the first in a series of actions for which the Commission can reasonably foresee development as the cumulative effect. Therefore this proposed sphere update is a project under CEQA.

*Is the Sphere of Influence Update an Exempt Project under CEQA?*

The determination of whether this project is exempt from CEQA rests on whether there is an applicable categorical exemption or whether the Commission can see "that there is no possibility that the activity in question may have a significant effect on the environment." (Gov't Code §15061(b)(2)-15061(b)(3)). The most common categorical exemption applied by LAFCO of Napa County to sphere amendments is G.C. §15319, but it is generally used only in conjunction with a concurrent proposal for annexation. Government Code §15319 speaks to the exemption of annexations under certain conditions and does not appear to apply to this sphere update. LAFCO of Napa County has also, on occasion, relied on a determination that a sphere change is exempt because there is no significant effect on the environment. However, this exemption has been applied when there is relative certainty that the level of development can and will occur whether the sphere is changed or not. By definition, the sphere of influence determines the probable future boundaries of the City. In this case, staff believes that the expressed interest of several key property owners, as well as a recent agreement between the City of American Canyon and the County of Napa concerning housing, perceptibly heighten the probability that much, if not all, of the sphere of influence will become part of the City.

The City of American Canyon and the County of Napa contend that similar levels of development could and would occur under the jurisdiction of either agency. LAFCO cannot be certain that similar levels of development will occur under either jurisdiction because the agencies' general plans do vary in their allowed and permitted uses in the sphere update areas. (Attachment D is a table summarizing the land uses currently allowed in each of the four sphere update areas by the general plans of both the County and the City.) However, "Exhibit 3: Development Assumptions" in the initial study was crafted through consultation with planning experts from both agencies and represents a reasonable set of assumptions as to what levels of development are possible. Though the Commission cannot be certain that levels of development will be similar under either jurisdiction, it can reasonably assume that they will be similar and conduct an analysis accordingly.

The original initial study and draft mitigated negative declaration acknowledged that similar levels of development *could* occur under either jurisdiction but focused on the outcomes that *would* (were likely to) occur under the jurisdiction of the City of American Canyon. Upon consideration of the submitted comments, staff believes the appropriate premise of the initial study should be that similar levels of development could and would occur. This premise reflects the fact that if the sphere update is approved, the Commission could authorize the City to extend the municipal services necessary to

facilitate development approved by the County in the unincorporated sphere areas (pursuant to Government Code §56133(b)). It remains the case, though, that approval of the sphere update constitutes the first in a series of actions that could result in development.

It is staff's conclusion that development can, and likely will, occur to similar levels under the jurisdiction of the City of American Canyon or the County of Napa. However, the Commission does not have the certainty (that there will be no impact on the environment) necessary to determine that the sphere update is exempt from CEQA.

#### Conclusion of Nichols Berman and LAFCO Staff

At staff's direction, Nichols Berman has revised the initial study to reflect the assertion that similar levels of development can, and are likely to, occur under either the City of American Canyon or the County of Napa. The revised initial study is being circulated in conjunction with this supplemental report. Accepting this assertion as probable, the revised initial study finds that the evaluated project, the sphere update, while in-and-of-itself does not result in significant environmental impacts, is an indirect antecedent to development. While the Commission can identify these indirect impacts, it is not legally feasible for it to impose the proposed mitigation measures of the draft mitigated negative declaration.

However, it is appropriate for the Commission to identify the impacts it perceives to be the indirect result of its action and to note at what points in the series of subsequent actions the Commission perceives there to be the opportunity for a regulatory authority to impose mitigation measures. LAFCO's mandate from the Legislature is to foster the orderly development of local governmental agencies, to discourage urban sprawl, and to preserve agricultural lands. By conducting an initial study, the Commission fulfills its obligation to address the environmental impacts it foresees as a probable result of its action and it better informs the regulatory authorities of impacts that should be addressed to fulfill LAFCO's mandate.

With respect to the specific conditions of the proposed American Canyon sphere of influence update, it is the conclusion of Nichols Berman and LAFCO staff that a negative declaration is the appropriate action for the Commission to take pursuant to CEQA. Staff is circulating this supplemental report, a revised initial study, and a notice of intent to adopt a negative declaration for a 30-day review and comment period prior to the Commission's scheduled February 26, 2004 public hearing on this matter.

**PROCESS & TIMELINE**

LAFCO staff is implementing the following process and timeline for the duration of this project:

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| January 23, 2004  | Release of supplemental report, initial study, and notice of intent to adopt a negative declaration. Initiation of 30-day comment period.   |
| February 17, 2004 | Last day for property owners to submit written notice of their position on proposed sphere update. Notice or comments received after this date will be provided to the Commission but not included in staff's final comments. |
| February 23, 2004 | Close of 30-day comment period on proposed negative declaration.  |
| February 26, 2004 | Public hearings to adopt negative declaration and to vote on the sphere of influence update for the City of American Canyon.  |